

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LILLIE MAY NICHOLS,

Defendant-Appellant.

UNPUBLISHED

May 28, 1999

No. 208214

Jackson Circuit Court

LC No. 97-080103 FH

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Defendant pleaded guilty to embezzlement by an agent over \$100, MCL 750.174; MSA 28.371, and was sentenced to five to ten years' imprisonment. Defendant appeals as of right. We affirm defendant's conviction and sentence, but remand for the administrative task of correcting the presentence investigation report and transmitting the corrected report to the Department of Corrections. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sentence does not violate the principle of proportionality, in light of the reasons articulated on the record by the trial court at the time of sentencing, which were not adequately considered in the sentencing guidelines recommendation, and in light of the benefits bestowed upon defendant by the plea agreement. *People v Houston*, 448 Mich 312, 320-328; 532 NW2d 508 (1995); *People v Dixon*, 217 Mich App 400, 412-413; 552 NW2d 663 (1996).

We conclude, however, that defendant is entitled to a remand solely for the purpose of correcting the presentence investigation report. Defendant challenged the accuracy of an assertion contained in the victim's impact statement that defendant had been arrested on a prior occasion for assaulting her husband with the intent to commit murder after she inflicted a gunshot wound upon him. The trial court declined to consider the information in response to defendant's challenge. Nevertheless, the court declined to strike the information from the report. Because the statement was one of fact, and not one of opinion or emotion, *People v Wybrecht*, 222 Mich App 160, 173-174; 564 NW2d 903 (1997); *People v Steele*, 173 Mich App 502, 505; 434 NW2d 175 (1988), and because the statement exceeded the scope of the victim's statutorily permitted rights, MCL 780.763(3); MSA 28.1287(763)(3); *Steele, supra*, the trial court should have stricken the statement from the report upon

its determination that the information was irrelevant for sentencing purposes, *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995). Accordingly, on remand the information should be stricken and a corrected copy of the report should be transmitted to the Department of Corrections.

Affirmed, but remanded for correction of the presentence report in accordance with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald